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**BEFORE THE SENATE
COMMITTEE ON FINANCE**

HEARING ON

“CONGRESS AND U.S. TARIFF POLICY”

TESTIMONY OF

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Mr. Chairman, Senator Wyden, members of the committee, thank you for the opportunity to speak today on behalf of the twelve and a half million working men and women of the AFL-CIO on this important topic.

The labor movement and our allies have been advocating for a Raising Wages economy for many years. We don't believe we can build strong and sustainable economic growth on a foundation of stagnant wages and disempowered workers. And a key component of a Raising Wages economy is a new approach to trade and globalization – one that puts good jobs, safe products, and a clean environment at the center of global economic integration – not enhanced corporate power and profits.

The AFL-CIO has been advocating for a new trade policy for more than two decades – we have engaged with the executive branch, as well as with Congress, to advocate for progressively strengthening and making more effective our labor and environmental provisions, for reforming investment rules, for ensuring that we have found the appropriate balance in regulatory measures and intellectual property protections, for fair rules of origin, and for finally including meaningful currency provisions in trade agreements, among many other issues.

Far from being “opposed to trade on principle,” we have supported trade deals when warranted, such as the U.S.-Jordan trade agreement and trade preference programs such as the African Growth and Opportunity Act (AGOA) and the Generalized System of Preferences (GSP). We have supported reauthorization of the Export-Import Bank. We have engaged with policymakers in both parties and at every level to work toward a new generation of trade policies that will create a virtuous cycle of demand-led growth while strengthening our democracy, protecting workers' rights globally and promoting sustainable global economic development. Key to reforming our trade policies is abolishing the outdated, unaccountable, undemocratic fast track process.

For too long, decisions about trade policy have been made behind closed doors, with excessive secrecy. The secrecy tends to serve the policy interests of political and economic elites, not the broad interests of the American middle class. American workers, farmers, small and medium-sized businesses and domestic producers have paid the price.

The stakes could not be higher. The Trans-Pacific Partnership (TPP), now being negotiated by our government, includes twelve countries and about 40 percent of the world economy. It is designed to be infinitely expandable – that means that additional countries could join in the future, subject to congressional approval and as long as they agree to the original terms negotiated. TPP could be the last trade agreement we negotiate, so it is especially crucial that we get the terms right.

The idea that fast track lets Congress set the standards and goals for the TPP is a fiction – the agreement has been under negotiation for more than five years and is essentially complete. Congress cannot set meaningful negotiating objectives in a fast track bill if the administration has already negotiated most of the key provisions. And Congress will lose crucial leverage over any few remaining provisions by agreeing to fast track at this late date.

To update our trade and economic policies for the 21st Century, we must change the process that governs the negotiation and passage of trade deals. Today's “trade” agreements are about much more than tariffs and quotas. They affect foreign and domestic investment, financial services, food safety, labor rights, environmental protections, Buy American procurement policies, consumer safety, health care, and more. These agreements put in place rules that could limit the ability of Congress and the states to legislate in the public interest now and for decades to come. Yet the public and Congress have too little say in the important details of these deals.

Through fast track, past Congresses have ceded authority over trade policy to the executive branch with virtually no strings attached. While all fast track bills have gone through the charade of listing “negotiating objectives,” there have been no consequences when the administration willfully ignores or fails to achieve any or all of these. Fast track has failed to include meaningful accountability mechanisms, including tools to turn off expedited consideration when warranted. This cedes important and long-lasting decisions about our economy to a few negotiators in a small room in the middle of the night. This is undemocratic. It’s wrong. And it has led to disastrous policies for America’s workers and producers.

America needs an entirely new trade negotiating authority, not minor tweaks at the margin.

The Hatch-Wyden-Ryan Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Fast Track 2015) does not represent a new form of trade negotiating authority. It doesn’t meet a single criterion set out by the AFL-CIO in its publication [“Time for a New Track.”](#)

Congress must not agree to fast track a fast track bill. The short time allotted between introduction of the bill, hearings, committee consideration, and floor action is a sign that this bill cannot stand on its own merits. It is losing support fast. It seems that its proponents see their only hope for passage is to rush it through before anyone has had a chance to review it properly. The American people deserve better.

A new and effective trade negotiating authority must:

- **Ensure Congress approves trade agreement partners before negotiations begin:** Congress should be able to weigh in on whether countries (including those that suppress their wages through allowing or engaging in serious labor and human rights abuses) are appropriate partners to receive permanent trade benefits. If Congress does not agree with the choice of trade partners, it ought to be able to deny expedited consideration to agreements that include them. Fast Track 2015 contains not a single opportunity for Congress to reject an administration’s proposed trading partners.
- **Create negotiating objectives that are specific to the trade partners involved:** Even though the U.S. has amassed historic trade deficits over the last 20 years and is currently negotiating the TPP with partners that have histories as labor and human rights abusers, currency manipulators, over-fishers, or transshipment hubs, Fast Track 2015 fails to tailor objectives to the unique situations in the eleven countries involved.
- **Ensure that Congress, not the executive branch, determines whether Congressional trade objectives have been met:** Fast Track 2015 fails to include an effective accountability mechanism to ensure that Congressional instructions are carried out, leaving the executive branch in the position of essentially grading its own performance. Not surprisingly, no executive branch has ever confessed failure to meet Congress’s goals. Congress should have the final say on whether negotiating objectives have been met. It could employ a variety of tools to help evaluate the deal, for instance by requiring reports from the Government Accountability Office, Congressional trade advisors, or from all Congressional committees whose jurisdiction would be impacted by the topics covered by the trade deal in question. Open hearings would help shed considerable light on the completed deals and help Congress to determine if its objectives were fulfilled.

On the other hand, an evaluation process solely in the hands of the committees responsible for trade policy (Finance and Ways & Means) won't provide a reliable measurement. It is widely conceded that neither committee is representative of the opinions of the larger body of Congress when it comes to trade.

- **Ensure Congress has effective opportunities to strip expedited consideration provisions from trade deals that fail to meet Congressional objectives or to incorporate Congressional and public participation:** Fast track, even if it had perfect negotiating objectives, has *never* provided Congress a realistic opportunity to withdraw expedited consideration from deals that fail to measure up. For reasons noted above, the process *cannot* be left solely in the hands of the committees responsible for trade, as Fast Track 2015 does. The rest of Congress would have to rely on these committees to reject the trade deal first (an extremely unlikely possibility given the makeup of the panels) and only then attempt to strip expedited consideration from the deal. Leaving the decision solely in the hands of these committees provides no effective opportunity to “strip expedited consideration” from a job-killing deal.

Nor should the process set impossibly high supermajority vote thresholds, which Fast Track 2015 also does, by requiring 60 votes in the Senate to strip fast track from a bad deal when only 51 are required to vote the deal down. If fast track privileges can be granted to a trade agreement on a simple majority vote, it should be possible to remove the privileges with a simple majority vote. To be clear, the goal of this criterion is not to subject a trade deal and its implementing legislation to an unwieldy process. It is to ensure that bad deals go back to the negotiating table instead of becoming bad laws.

- **Increase access to U.S. trade policymaking, trade proposals, and negotiating text for Congress, congressional staff, and the public:** Fast Track 2015 simply locks in current USTR practice, which is unacceptable. Instead, Congress should broadly expand the universe of those who have access to U.S. proposals and full negotiating texts (optimally, full negotiating texts should be available to the public). The 21st Century is the internet age—citizens are accustomed to viewing proposed and amended legislation on line. Trade policy should be no different. While USTR analogizes sharing trade proposals to showing a used car salesman one's bottom line at the outset of negotiations, this analogy is inapt. Neither USTR, nor any other rational negotiating partner, would put its bottom line in its first proposal; and after the proposal has been shared with the negotiating partner, any possible justification for keeping it secret is moot.
- **Be part of a larger trade and competitiveness package that addresses shortcomings in existing trade enforcement and remedies and provides complementary domestic economic policies that will help ensure that *all* can benefit from trade:** Fast Track 2015 contains not a single piece of domestic economic reform to help America's working families thrive under expanded trade. Trade is not a substitute for investing in our own future. To work, trade deals require thoughtful complementary policies, including upgrading our ports, airports, roads and rail; investing in education and skills training so that workers young and old can benefit from any new jobs that trade creates; labor market policies that support working families; renewal of export promotion initiatives, including the Export-Import Bank; extending tax policies to promote advanced manufacturing, renewable fuels, and R&D; and fully funding well-designed and easy to use enforcement mechanisms to catch and deter trade cheats. Enacting trade deals without upgrading our domestic economy will only lead to more disappointing deals that undermine jobs and wages for U.S. workers and exacerbate the race to the bottom.

In short, the proposed fast track mechanisms are inadequate to ensure that the major shortcomings in the TPP will be resolved in ways that will benefit, rather than harm, working people in the U.S. and around the Pacific Rim. Among the numerous issues, the top four remain:

Currency: Addressing currency manipulation is probably the single most effective action the U.S. can take to create jobs. The fact that currency provisions continue to be absent from the TPP is disturbing on two fronts: it is both a glaring policy omission and a procedural concern. In the absence of existing fast track legislation, the one trade-related issue on which bipartisan majorities of the House and Senate have spoken clearly is currency. Misaligned currency is an important contributing factor to the U.S. trade imbalance with China and other nations. The Economic Policy Institute estimates the U.S. could add as many as 5.8 million jobs by eliminating currency manipulation. Provisions must be included in the TPP, and they must be enforceable. Otherwise, the U.S. will continue to bleed jobs to China and other currency manipulators.

Investment: To ensure that the TPP does not skew benefits toward global corporations, it should eliminate investor-state dispute settlement (ISDS). ISDS undermines democratic control, and is currently being used to attack public health policies in Australia and Uruguay, environmental policies in Canada and Peru, and labor provisions in Egypt. Rather than challenge actual takings or discriminatory policies, global firms use ISDS to seek compensation for a violation of the nebulous right to “fair and equitable treatment,” which the private arbitrators have interpreted expansively. ISDS creates a chilling effect on local, state, and national measures and poses an unjustifiable risk to our democracy and economy.

Climate: Currently, U.S. trade policy could undermine both domestic efforts to address climate and the administration’s bilateral agreement with China to cooperate on climate change and clean energy. Unless the TPP sets the bar in line with the recent bilateral agreement with China, it represents a missed opportunity. Without a border adjustment—to adjust the cost of highly polluting imports so that low-emission U.S. and high-emissions foreign goods can fairly compete—the TPP will do nothing to stop manufacturers from closing up shop in the U.S. and moving to TPP countries with no carbon reduction scheme in order to sell cheaper, dirtier goods here and around the globe, undercutting not only our workers but our efforts to address climate change.

Labor: The labor movement has been clear from the outset of the TPP talks that the status quo on labor (the so-called “May 10” agreement) needed further strengthening. The “May 10” standards were a first step towards leveling the playing field for workers, but did too little to ensure timely and effective action. In 2011, the AFL-CIO joined with labor federations from the majority of TPP countries to draft and submit a comprehensive labor chapter that attempted to address past shortcomings. To the best of our knowledge, this new model has not been incorporated into the agreement. We have no reason to believe that, despite being touted as including the “highest labor standards ever,” the TPP will include meaningful improvements over “May 10.” The problem with language such as “highest labor standards ever” is that the point of comparison is so low – even after the highly touted “Labor Action Plan” in Colombia, workers continue to be killed, beaten, and threatened for exercising basic rights like organizing with fellow workers for better wages and working conditions.

Indeed, the TPP may be too complex to stake out a position “for” or “against” without careful consideration of its voluminous text, a careful study of the impacts of prior, similarly structured agreements, and broad consultations with legal experts from a variety of points of view who have also had an opportunity to study the texts. Such discussion, study, and thorough evaluation seems unlikely given the current level of secrecy surrounding the text. Moreover, it seems even less likely to occur should Congress accede to fast track authority, which will severely limit the time that Congress and

outside experts may study the text before a simple up-or-down vote is required. Finally, should Congress decide that, while the TPP contains some beneficial provisions, on balance it presents a risk to the firms, families, and communities of the United States, Congress may already have lost much of its leverage to force improvements in the deal.

In sum, to get the TPP right, Congress faces consequential choices that, for the good of the country, should not be constrained by the misguided secrecy, speed, and unaccountability of fast track. To best safeguard the authority over trade policy given to Congress by the Constitution, the AFL-CIO urges Congress to reject the outdated and undemocratic process known as fast track and develop instead a new trade negotiating authority for the 21st Century.